

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

AGERE SYSTEMS, INC.;  
AMERICAN COLOR AND CHEMICAL, LLC;  
CARPENTER TECHNOLOGY CORPORATION;  
CONTINENTAL HOLDINGS, INC.;  
THE GLIDDEN COMPANY;  
HONEYWELL INTERNATIONAL INC.;  
QUADRANT EPP, INC.;  
UNISOURCE WORLDWIDE, INC.,

Defendants.  
\_\_\_\_\_

Civil Action No. \_\_\_\_\_

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

**PRELIMINARY STATEMENT**

1. This is a civil action pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9607 and 9613, for the recovery of costs incurred by the United States in response to the release or threat of release of hazardous substances at the Berks Landfill Superfund Site

(the "Site"), located in Spring Township, Berks County, Pennsylvania. The United States also seeks a declaratory judgment establishing Defendants' liability for any response costs that may be incurred by EPA in the future, that will be binding in any subsequent action by the United States against Defendants to recover such further response costs.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b).

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this District, and because the Site is located in this District.

4. Defendant Agere Systems, Inc. is a Delaware corporation. With respect to the allegations in this Complaint, Defendant Agere Systems is the successor by corporate name change and/or merger to Lucent Technologies, Inc., AT&T, Inc. and Western Electric Corporation.

5. Defendant American Color & Chemical, L.L.C. (formerly American Color & Chemical Corporation) is a Delaware corporation.

6. Defendant Carpenter Technology Corporation is a Delaware corporation.

7. Defendant Continental Holdings, Inc. is a Delaware corporation. With respect to the allegations in this Complaint, Defendant Continental Holdings is the successor by corporate name change and/or merger to Crown Beverage Packaging, Inc. and Continental Can Company, Inc.

8. Defendant The Glidden Company is a Delaware corporation.

9. Defendant Honeywell International Inc. is a Delaware corporation. With respect

to the allegations in this Complaint, Defendant Honeywell International is the successor by corporate name change and merger to AlliedSignal Inc. and Prestolite Battery Division of Eltra Corporation.

10. Defendant Quadrant EPP, Inc. is a Pennsylvania corporation. With respect to the allegations in this Complaint, Defendant Quadrant EPP is the successor by corporate name change and/or merger to DSM Engineering Plastic Products, Inc. and The Polymer Corporation.

11. Defendant Unisource Worldwide, Inc. is a Delaware corporation and a wholly owned subsidiary of Georgia-Pacific Corp. With respect to the allegations in this Complaint, Defendant Unisource Worldwide is the successor by corporate name change and/or merger to Wyomissing Corporation.

#### **GENERAL ALLEGATIONS**

12. The Site is located in Spring Township, approximately seven miles southwest of Reading, Pennsylvania.

13. The Site includes two sections of a closed landfill and associated property situated over an area of existing and potential groundwater contamination. The two sections of the landfill are referred to as the eastern landfill, which covers an area of approximately 47 acres, and the western landfill, which covers an area of approximately 19 acres.

14. Waste disposal in the eastern landfill began as early as the 1950s. The waste accepted included municipal refuse, demolition debris and industrial waste. Landfilling ceased in September 1986, and the landfill was closed pursuant to a Consent Order between the Pennsylvania Department of Environmental Resources and the Site owners.

15. The western landfill operated from the 1960s through the mid-1970s. The

western landfill accepted primarily municipal refuse, but may also have been used for disposal of hazardous wastes over time. The western landfill was closed in or around 1980 with a graded, low-permeability soil cap.

16. As a result of the landfilling activities at the Site, there have been releases and/or threatened releases of hazardous substances into the environment at the Site.

17. Analysis of samples from the Site confirmed the presence of hazardous substances, as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to benzene, trichloroethene, 1,2 dichloroethene, 1,1, dichloroethene, vinyl chloride, lead, zinc, copper, beryllium, cadmium, and nickel.

18. On or about October 2, 1989, the Site was listed on the National Priorities List ("NPL") pursuant to 42 U.S.C. § 9605. *See* 54 Fed. Reg. 41020 (October 2, 1989).

19. On August 7, 1990, EPA issued a Unilateral Order for Removal Action ("Removal Order") to certain potentially responsible parties ("PRPs") at the Site. The Removal Order required the PRPs to implement various removal actions, including the installation and ongoing operation and maintenance of an automatic leachate management system. A limited number of PRPs, including certain of the named defendants, complied with the Removal Order.

20. On July 5, 1991, EPA and three PRPs, including certain of the named defendants, entered into an Administrative Order on Consent ("AOC") to conduct a Remedial Investigation/Feasibility Study at the Site. Pursuant to this AOC, the three PRPs performed a remedial investigation, prepared a baseline risk assessment and developed a feasibility study.

21. On July 22, 1997, EPA issued the Record of Decision ("ROD") describing the selected remedy for the Site. The remedy selected by EPA is intended to control and limit

exposure to contaminated ground water and soils at the Site. The remedy calls for:

a) institutional controls; b) long-term monitoring of ground water, surface water and combustible gases; c) leachate management system operation and maintenance; and d) cap repair and maintenance, to include a cap exhibiting a minimum of one-foot final cover thickness on the eastern landfill and non-forested portions of the western landfill.

22. On March 31, 1998, the United States issued an Unilateral Administrative Order, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring certain potentially responsible parties to perform the Remedial Design and Remedial Action at the Site. The complying PRPs have completed the Remedial Design and physical construction of the Remedial Action for the Site, and are performing required operation and maintenance activities.

23. The United States District Court for the Eastern District of Pennsylvania has previously approved and entered three consent decrees regarding the Site. Two of these consent decrees implemented settlements between the United States and eight potentially responsible de minimis parties with respect to the Berks Landfill Site. *See United States v. Fleetwood Industries, Inc., et al.* (Civil Action No. 00-CV-1818). Pursuant to these prior settlements, the eight settling parties paid a total of \$90,058.44 to the United States in reimbursement of a portion of the United States' outstanding response costs incurred in connection with the response actions described in the foregoing paragraph.

24. Pursuant to the third consent decree, the settling defendants, including the Defendants in this matter, agreed to pay approximately \$1.1 million to resolve the United States' claim for response costs incurred in connection with the Site through May 31, 2002. *See United States v. Agere Systems, Inc., et al.* (Civil Action No. 02-CV-1681).

25. Since May 31, 2002, the United States has incurred further response costs in connection with the release and threatened release of hazardous substances at the Berks Landfill Site. These costs were incurred primarily in connection with sampling and enforcement activities, as well as ensuring the placement of appropriate institutional controls on the property.

**CLAIM FOR RELIEF**

26. The foregoing paragraphs are re-alleged and incorporated herein by reference.

27. The Defendants are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

29. The substances referenced in paragraph 17 above, and other substances contained in Defendants' waste materials transported to the Site, are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

30. Hazardous substances were "released" from the facility into the "environment" within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (8).

31. Defendants are within the classes of persons described in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

32. Defendants Agere Systems, Inc.; American Color and Chemical, LLC; Carpenter Technology Corporation; Continental Holdings, Inc.; The Glidden Company; Honeywell International Inc.; Quadrant EPP, Inc.; and Unisource Worldwide, Inc., or their predecessors in interest, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances which they owned or

possessed, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

33. The United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and as defined by Sections 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23) and (25), conducting response actions as a result of the release or threatened release of hazardous substances from the Berks Landfill Site. The United States has not been reimbursed for all of the costs it has expended.

34. The response actions for which the United States now seeks reimbursement were necessary and appropriate "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

35. The response costs for which the United States now seeks reimbursement were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

36. The United States may incur additional response costs in connection with the Site until all activities contemplated in the ROD are implemented and all response costs are paid by responsible parties.

37. The Defendants are jointly and severally liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all unreimbursed response costs incurred by the United States in connection with the response actions taken at the Site.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Enter a judgment holding Defendants jointly and severally liable for all unreimbursed costs incurred by the United States in response to the release and threat of release of

hazardous substances at the Site;

B. Enter a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), establishing Defendants' liability for any response costs that may be incurred by the United States in the future, that will be binding in any subsequent action by the United States against Defendants to recover such further response costs;

C. Award Plaintiff its costs and disbursements in this action; and

D. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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